

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #7

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2002 MAY -9 A 10: 03

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

EAR May 22, 2002

NOTICE OF AN EMERGENCY RULE

AGENCY: DHHR - Division of Human Services TITLE NUMBER: 78

CITE AUTHORITY: WV Code §24-2C-4

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 15

TITLE OF RULE BEING AMENDED: Tel-Assistance Program

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

See Attached.

Use additional sheets if necessary

Paul Z. Rusb
Authorized Signature

SCANNED

\$5.00

STATEMENT OF NEED FOR EMERGENCY RULES

Pursuant to West Virginia Code Section 29A-3-15(f), the Department of Health and Human Resources finds an emergency exists requiring the promulgation of an emergency rule. A statement of the facts and circumstances constituting this emergency follows:

In 1985, the West Virginia Legislature found that “universal telephone service contributes to the state’s economic, social and political integration and development” and is “of utmost importance to the state and its citizens.” and established the West Virginia Tel-Assistance Program (West Virginia Code Section 24-2C-1.) The Tel-Assistance program provides limited telephone service discounts to beneficiaries of four specified programs for low-income aged or disabled West Virginians. The Department of Health and Human Resources (DHHR) certifies the eligibility of applicants to participating telephone companies and the telephone companies provide the discounts. The Tel-Assistance program promotes universal telephone service by helping low-income customers to access basic service.

In 1996, Congress passed the Telecommunications Reform Act of 1996 authorizing the Federal Communications Commission (FCC) to implement programs to assist low-income telephone customers as part of the effort to achieve universal telephone service. In May 1997, the FCC adopted regulations to implement the universal service provisions of the Telecommunications Reform Act of 1996.¹ These regulations require all telephone companies in the United States receiving universal service support to expand the eligibility guidelines of low-income customers for discounted

¹ In re Federal State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, FCC 97-157 (May 8, 1997) at ¶¶348-353; 47 CFR 54.400 *et seq.*

telephone service. The federal universal service fund covers a large portion of these discounts. Additional federal funding may be obtained by providing state matching funds.

In accordance with the FCC's mandate and the West Virginia Public Service Commission's implementing order in Case No. 97-1515-T-T, every local telephone company in West Virginia filed new tariffs in December, 1997 to expand the eligibility for participation in discount programs. The DHHR regulations governing eligibility verification were not changed to be consistent with the expanded Tel-Assistance tariffs. Approximately 100,000 households in West Virginia may be eligible to receive telephone service discounts under the expanded Tel-Assistance tariffs, with the proposed emergency rule. In 2000, the most recent reporting year, only 3,816 households participated in the Tel-Assistance program.

The proposed emergency rule will produce an increase in federal funding in West Virginia. During 2001, West Virginia received \$426,000 or only 0.06% of the total federal universal service funds available for telephone service discounts. Participation in Tel-Assistance should increase not only due to the proposed changes in DHHR rules, but also because of telephone company advertising which is scheduled to commence July 1, 2002. If West Virginia participation in Tel-Assistance were to increase such that it receives its proportional share of federal funds, funding would increase to nearly \$4 million per year, a ten-fold increase.

In addition to the expansion of Tel-Assistance in December 1997, the PSC recently approved a Stipulation and Agreement in Case No. 01-1031-T-PC among Verizon West Virginia Inc., the Staff of the Public Service Commission, and the Consumer Advocate Division. Under this agreement Verizon will offer an Enhanced Tel-Assistance Plan to eligible West Virginians in Verizon's incumbent service area beginning July 1, 2002 and ending June 30, 2005. Under the new Enhanced

Tel-Assistance Plan, low-income West Virginians will have even more options for discounted, low-cost telephone services. Federal universal service funds and Verizon will cover the cost of the Enhanced Tel-Assistance Plan.

To make DHHR regulations consistent with existing Tel-Assistance tariffs, and to implement the Enhanced Tel-Assistance Plan for Verizon, existing DHHR rules on certification of eligibility for Tel-Assistance must be amended. DHHR met with Verizon, the PSC Staff and the Consumer Advocate Division over the past several months to develop the necessary rule revision which is attached.

Non-emergency legislative rules cannot be proposed and adopted, in accordance with the procedures specified in Article 3, Chapter 29A of the West Virginia Code, in time to allow eligible West Virginians to begin taking advantage of existing Tel-Assistance tariffs and the new Enhanced Tel-Assistance Plan by the commencement date of the new plan, July 1, 2002. Promulgation of this proposed rule as an emergency rule is necessary to prevent the substantial harm to the public interest that will result if tens of thousands of low-income West Virginians cannot obtain the benefit of telephone service and lower monthly phone bills until final legislative rules are approved in the spring of 2003. Basic telephone service is essential for low-income West Virginians to move from welfare to work, for low-income working West Virginians to keep working, and for older and disabled low-income West Virginians to be connected to emergency services and community supports. Further, the state and federal monies available to pay for these discounts will be irretrievably lost, causing detriment to the individual customers.

BRIEF SUMMARY OF PROPOSED RULE

Under West Virginia Code, Chapter 24, Article 2C, the Tel-Assistance program provides reduced monthly rates to certain low-income telephone customers. The Department of Health and Human Resources (DHHR) determines the eligibility of applicants for the Tel-Assistance program and communicates those determinations to the local telephone companies. The proposed rules modify DHHR's existing rules on determination and communication of eligibility to be more flexible and to be consistent with revised federal rules. These changes should allow West Virginia to receive additional federal universal service funding.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Tel-Assistance Program, 78 CSR 15

Type of Rule: **Legislative** **Interpretive** **Procedural**

Agency: Department of Health and Human Resources

Address: Building 3 - Room 201, Capitol Complex
Charleston, W. Va. 25305

1. Effect of the Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense			\$	\$272	\$72
Repairs & Alterations					
Equipment					
Other					
Revenue					

2. Explanation of above estimates. Monthly run is estimated to be \$6 per month times 12 months = \$72; there is a \$200 one time only cost to write and test the program. Depending on when the rule is implemented will determine whether the \$200. cost will be in the current fiscal year or the next. As shown here, the rule is expected to go into effect July 1, 2002.

3. Objectives of this rule:

This rule establishes the procedures under which DHHR shall operate the Tel-Assistance Program which allows qualified low-income persons to request and receive basic local telephone service at a rate lower than the standard telephone service rate. The Department is responsible for determining eligibility of applicants for the tel-assistance program and for communicating those determinations to the participating telephone companies and the Public Service Commission.

4. Explanation of Overall Economic Impact of Proposed Rule.

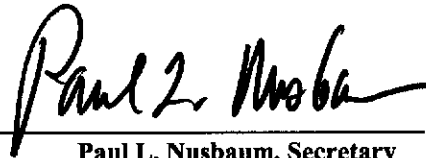
A. Economic Impact on State Government. None.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens. This program allows for the providing of telephone service to low income individuals who otherwise may not be able to afford telephone service.

C. Economic Impact on Citizens/Public at Large. Under this new Enhanced Tel-Assistance program, low-income West Virginians will have even more options for discounted, low-cost telephone services, the costs covered by federal universal service funds and Verizon. Also, this program is expected to assist low-incomes West Virginians to move from welfare to work, for low-income working West Virginians to keep working, and for older and disabled low-income West Virginians to be connected to emergency services and community supports.

Date: May 8, 2002

Signature of Agency Head or Authorized Representative:

A handwritten signature in black ink, appearing to read "Paul L. Nusbaum", written over a horizontal line.

**Paul L. Nusbaum, Secretary
Department of Health and Human Resources**



9 **EMERGENCY RULE QUESTIONNAIRE**

DATE: May 9, 2002

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Office of Family Support - Bureau for Children & Families
350 Capitol Street - Room B-18; Charleston, WV 25301-3705

Contact: Sue Ellen Buster 558-8290

EMERGENCY RULE TITLE: Tel-Assistance Program

1. Date of filing May 9, 2002

2. Statutory authority for promulgating emergency rule:
W Va Code §24-2C-4

3. Date of filing of proposed legislative rule: May 9, 2002

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? It amends a current legislative rule.

5. Has the same or similar emergency rule previously been filed and expired?
No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.
See attached

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

~~See attached.~~

**EMERGENCY RULE QUESTIONNAIRE ATTACHMENT
STATEMENT OF NEED FOR EMERGENCY RULES**

Pursuant to West Virginia Code Section 29A-3-15(f), the Department of Health and Human Resources finds an emergency exists requiring the promulgation of an emergency rule. A statement of the facts and circumstances constituting this emergency follows:

In 1985, the West Virginia Legislature found that “universal telephone service contributes to the state’s economic, social and political integration and development” and is “of utmost importance to the state and its citizens.” and established the West Virginia Tel-Assistance Program (West Virginia Code Section 24-2C-1.) The Tel-Assistance program provides limited telephone service discounts to beneficiaries of four specified programs for low-income aged or disabled West Virginians. The Department of Health and Human Resources (DHHR) certifies the eligibility of applicants to participating telephone companies and the telephone companies provide the discounts. The Tel-Assistance program promotes universal telephone service by helping low-income customers to access basic service.

In 1996, Congress passed the Telecommunications Reform Act of 1996 authorizing the Federal Communications Commission (FCC) to implement programs to assist low-income telephone customers as part of the effort to achieve universal telephone service. In May 1997, the FCC adopted regulations to implement the universal service provisions of the Telecommunications Reform Act of 1996.¹ These regulations require all telephone companies in the United States receiving universal service support to expand the eligibility guidelines of low-income customers for discounted

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To make DHHR regulations consistent with existing Tel-Assistance tariffs, and to implement the Enhanced Tel-Assistance Plan for Verizon, existing DHHR rules on certification of eligibility for Tel-Assistance must be amended. DHHR met with Verizon, the PSC Staff and the Consumer Advocate Division over the past several months to develop the necessary rule revision which is attached.

Non-emergency legislative rules cannot be proposed and adopted, in accordance with the procedures specified in Article 3, Chapter 29A of the West Virginia Code, in time to allow eligible West Virginians to begin taking advantage of existing Tel-Assistance tariffs and the new Enhanced Tel-Assistance Plan by the commencement date of the new plan, July 1, 2002. Promulgation of this proposed rule as an emergency rule is necessary to prevent the substantial harm to the public interest that will result if tens of thousands of low-income West Virginians cannot obtain the benefit of telephone service and lower monthly phone bills until final legislative rules are approved in the spring of 2003. Basic telephone service is essential for low-income West Virginians to move from welfare to work, for low-income working West Virginians to keep working, and for older and disabled low-income West Virginians to be connected to emergency services and community supports. Further, the state and federal monies available to pay for these discounts will be irretrievably lost, causing detriment to the individual customers.

**TITLE 78
EMERGENCY RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
DIVISION OF HUMAN SERVICES**

FILED

2007 MAY -9 A 10:03

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**SERIES 15
TEL-ASSISTANCE PROGRAM**

§78-15-1. General.

1.1. Scope. -- This Legislative rule establishes the procedures under which the West Virginia Department of Health and Human Resources shall operate the Tel-Assistance Program pursuant to the provisions of W. Va. Code §24-2C-4 and 47 USC 254. Related information is found in Chapter 19.8 of the Department's West Virginia Income Maintenance Manual. The West Virginia Code is available in public libraries and on the Legislature's web page: <http://www.legis.state.wv.us/>. The United States Code is available in public libraries and on Congress' web page: <http://www.loc.thomas.gov>.

1.2. Authority. -- W. Va. Code §24-2C-4.

1.3. Filing Date. --

1.4. Effective Date. --

§78-15-2. Purpose.

2.1. The Tel-Assistance Program allows qualified low-income persons to request and receive basic local telephone service at a rate lower than the standard telephone service rate.¹

§78-15-3. Definitions.

3.1. Department. -- The West Virginia Department of Health and Human Resources.

3.2. Disabled. -- The inability to do any substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to last for a continuous period of not less than thirty (30) days.

3.3. Public Service Commission. - The Public Service Commission of West Virginia.

¹ Tel-Assistance rates for each local telephone company are set forth in the tariffs filed by those companies with the Public Service Commission.

§78-15-4. Responsibilities of the Department.

4.1. The Department is responsible for the following activities:

4.1.a. Determining eligibility of applicants for Tel-Assistance on an initial and a continuing basis; and

4.1.b. Communicating those determinations to the participating telephone companies and the Public Service Commission.

§78-15-5. Eligibility Requirements.

5.1. An individual is eligible for Tel-Assistance if he or she is:

5.1.a. Disabled or sixty (60) years of age or older and is a recipient of Temporary Aid to Needy Families (TANF) and Food Stamps; or

5.1.b. Disabled or sixty (60) years of age or older and has a monthly income no higher than Supplemental Security Income (SSI) eligibility levels; or

5.1.c. A participant in any of the programs listed in the Tel-Assistance tariffs of the participating telephone companies on file with the Public Service Commission.

§78-15-6. Determination and Communication of Eligibility.

6.1. In order to allow the Department to make a determination as to eligibility, the participating telephone companies shall provide the Department with the names and social security numbers of applicants for Tel-Assistance.

6.2. The Department shall routinely communicate eligibility determinations to telephone companies that request such eligibility determinations.

6.3. The Department shall annually provide the participating telephone companies with the birth date and basis for eligibility for individuals receiving Tel-Assistance. Unless the participating telephone companies obtain this information lawfully through other means and without an obligation to maintain its confidentiality, the participating telephone companies shall not use or disclose this information for any purpose other than the administration of Tel-Assistance. The administration of the program may include reporting by the participating telephone companies of eligibility information on an aggregate, non-individual basis to the Public Service Commission or its staff.

§78-15-7. Notification of Eligibility.

7.1. Participating telephone companies shall notify applicants of Tel-Assistance eligibility and benefits.

§78-15-8. Questions of Eligibility.

8.1. Participating telephone companies shall answer all questions of eligibility regarding receiving Tel-Assistance benefits.

8.2. All other responsibilities related to the implementation of the Tel-Assistance Program shall be handled by the participating telephone companies, and by the Public Service Commission as prescribed in W. Va. Code §24-2C.